

From: Melissa Gastgaber <melissag@salander.com>
Subject: Re: Larry - no Thurs
Date: December 13, 2006 5:34:40 PM EST
To: Earl Davis <mellowpad@earthlink.net>

Dear Earl,

I have your email and I am not sure how or if to respond to it. Was it you on the telephone with me last week the day after we met? I ask because it is hard to believe that person is the same person who wrote, "...I am trying not to hate you...". If it is so very difficult than I would advise you to stop trying and do what you feel you have to. I cannot *tolerate* reading any more of these communications. I will do my best to answer the specific questions as soon as I cool off. I am trying to ascertain exactly how much I owe you. Marc said he is talking to you about the payment schedule. Whatever agreement we come to you can rest assured of two things: the first is that you will be paid every payment on time, the second is that you will be paid in full way before you will get paid as a result of any other dynamic if you make your case and I don't argue it.

I know you know that I have done a great deal here for Davis and the Davis family. I do not expect anything for it except your friendship and understanding. Davis and the Davis family have done a great deal for me too. I don't really expect you to do this Earl but what would be so bad if you decided that since I have spent millions of dollars on the catalogue *raisonne* project and never made one penny as a result of it you might want to credit me on what I owe you? Let's say one or one and a half million dollars - or, better yet, accrue all my expenses on the catalogue and apply it all (in which case you'd owe me money).

What I do think I have the right to expect and to insist on is that you stop the innuendos and bullying and stop applying pressure as a means to your end (which is the same as mine). I already admitted to you that I fucked up, which I have told you I will rectify. I am here working every day and I assure you that whatever you are feeling in terms of discomfort is a vacation for me.

I would swear on everything that's holy that if the situation were reversed I would *not* be acting as you have over this unless I was at the point of starvation. It is not that I would forget about getting the accounting I needed or the settlement regarding money. The most important thing to me would be that you gave me your word - even if a small percentage of "promises" you made were broken or modified out of the decades worth that were not. Then I would be more concerned about offering to help you instead of adding to your shit (knowing as you must know I am not running away). Way down the list of my thinking would be the practical fact about the best way to achieve my necessities. There are alternatives - all of which have certain ramifications and potential. Even if you take the friendship thing out of the equation these alternatives hold true:

1. Negotiate Settlement: This involves dealing with the present and future and not the past. As you have known me for years it should not be impossible to reach an agreement

that we both can live with. The only thing that could stand in the way of paying you would be my death for which you have ample life insurance coverage on me. You will be making interest on the outstanding balance and will not be at risk as in other investments. This option of negotiation also holds the promise of a continuation of our long relationship. Also, any other method of dealing with this will be very expensive emotionally as well as in dollars.

2. Legal: This step would at least remove the necessity of our conversing other than through lawyers. I would miss it personally but you may find it a relief. Once that starts however there will always be a diminishment of accusing messages going back and forth. Both lawyers will know it is in their best interest to set us against one another and they will make things much worse. It will also provide a defensive action on my part in the name of survival. In that case I will do everything I need to in order to protect my family and my business, which I have spent my life doing the best way I know how. I will make use of any piece of information I have that I believe would help my position. I have never used any information you gave me over the years against you. You however feel free to use the fact of the sale of the Bernini somehow relates to our situation. It does but only to the extent it helps me to stay in business. This case will go on for years before it is resolved and then it may have and probably would have collateral ramifications based on information that came especially during process of trial. Some of these would certainly affect you. Also there are never any guarantees about the result of these things other than the lawyers make money and a lot of it. In other words a person in my position may have a case to make as well.

The long and the short of it is, even seen in the best light for you should we go ahead on this legal route, is that you would get paid years later - at the same time it would cost us both a great deal of money and emotional pain. Our relationship would surely be at an end and the process will have done irreparable damage to the gallery and even Stuart Davis.

There is no way that anyone can get paid if because of some legal action or judgment we are forced to give it up or declare bankruptcy, etc. All of these are reasons I hope we do not end up in this place. I will not allow you however to bully me or threaten me anymore. If you do go this route I *will* use everything I can to ensure that I protect my business and my family, as I am sure you will. It will not be pretty but believe me Earl I don't think you understand what you would be in for.

Nobody had given me anything other than the loyalty of their love and whatever is good about the combination of genetics that is me. There was no cache of painting worth millions and millions of dollars. There was and is no one to advocate for me or my achievements.

There was and is nobody to present my case to the public over 25+ years until they seem to begin to understand. There was and is nobody who has or will spend millions of dollars to support a project about my achievements (even if they were worth it) on top of everything else above mentioned. There is and will never be anyone who has been so consistently on the side of my work and so publicly committed to it and certainly no one who would have done all I have in order to maybe break even.

If my statement last week about the above troubled you than think about it before you write another letter to me that justifies what Earl - your behavior or my bad bookkeeping? "Sense of urgency" - really, as if I haven't been working hard enough on it. Urgency is reserved for really important things like my son's illness, or god forbid, yours. Urgency is

reserved for trying to control myself when I learn, as I did last week, of my college roommate's sudden death - 18 months ago. Urgency is reserved for making sure I remember to go to my kid's cello recital or ball game. Urgency is reserved for all the energy and belief and willpower it takes to stand up in public for the art, like your father's, I believe in. All that is urgent.

No Earl, what I am getting together for you is important but not urgent. You gave me the pictures to sell and to represent. You gave them to me because you thought I was the best person to do so. We have put prices on paintings together and you have made many changes over the years. You never told me in writing or in any other way that I needed your permission to send pictures out on consignment or approval to anyone. You never told me that you would be unhappy selling two, three, four or any number of paintings at once. We have not had a written agreement in years - it has all been done on trust - in both directions. If you believe that somehow I betrayed your trust I can honestly say that in the way you are acting you are betraying mine. I hope like you I am wrong about this. The fact is your trust was, is and will be well placed with me. You will get paid every cent you are owed. Here is where we are at as far as I am concerned:

I am working to ascertain exactly what is sold, what we have been paid for and when and what you have been paid for. Many times you asked me to pay for an expense out of proceeds and many other things that I have to look through old files to reconstruct. On each of these occasions you made it clear that I am accommodating you in some way or another and for which you had your own reasons for requesting. It is all going to take time.

I will continue to put straightening out our mess on the top of my list of *most important* (if not urgent) things to attend to. I will pay in full the amount of money I owe you in a manner we will decide on together - one that you can live with and I can live up to.

I will not allow myself to be bullied or threatened or allow you to make one innuendo after another in your notes to me. I will not stand for any actions you have threatened me with in the past without acting in kind. I have given you certain information in confidence. If you decide to use this information in any way without simply asking me first and it imposes on my standing and position as an art dealer and honest person by any innuendo I will react in an appropriate manner. My reputation is my only real asset and I will protect myself from anyone who knowingly makes an attempt to hurt it through rumor, innuendo or implication.

As long as we can be civil with each other I will continue to do my part with respect to getting you the information that you need and to reach an agreement on payment terms with you. If you insist on threatening me either directly or through my staff I shall react accordingly.

Having said all the above it would be a personal tragedy for me to lose you as a friend. You are the very first close friend of mine who ever felt the need to work at trying not to hate me. It is a devastating remark. Again, I say if you have to try - stop trying, I'm not worth it, nobody is. It is also very insulting for you to acknowledge my contribution to Davis and then insinuate that I brought it up to justify what I guess you implicate as some kind of bad

behavior. What I did for Davis justifies something but not what you imply. It justifies your faith in me; it justifies me to myself because instead of spending all the money to do the right thing I might have given it to my wife and kids (who may think that not giving it to them is unjustifiable). It justifies the faith we have to have in the notion that doing the right thing is more important than the results or rewards for doing it - a lot more important. It justifies all our work together on behalf of your father's work - the good times and the bad. It does not justify any untrustworthy actions that you may think I was involved in anymore than you can justify your inconsistent but mostly offensive behavior to me since I committed the sin of selling four of your father's paintings at one time.

Finally nothing can justify your obvious belief that you know more about the art business than I do. When I represent to you that the fact that two or three or four instances of "similar" type works by your father doesn't somehow dramatically affect the value of the early work other than creating an atmosphere to possibly sell them at all you should believe it because it is true. A Jackson Pollock landscape painting from the 1930s, 30 x 40 in. may sell for a few hundred thousand dollars. The same size work from Pollock from 1948, 49 or 50 would be \$20 million and up. A Franz Klein figurative painting (of which I have several) from the 1940s brings less than \$100,000 for a painting 40 x 50 in. His work that size from the 1950s can bring \$8 - 10 million. Rothko paintings from the figurative late 30s to the surrealist 1940s sell for less than \$1 million and most times less than a few hundred thousand dollars, where a small canvas from the late 1940s can bring \$10 million plus dollars. Marsden Hartley paintings of still lifes and landscapes have just climbed over the million dollar mark at most, where his abstract paintings from 1914 and 1915 can bring \$10 million and up. Edward Hopper's paintings with figures bring many multiples of the prices his work realizes for landscapes.

Had enough? - I could go on. The fact is that if a Davis is not a 1924 Odol type, an eggbeater, certain Parisian paintings, or other particularly important paintings from the 30s through the 1960s they are difficult to sell and not as valuable commercially. As good as he was as an artisan valuing his work as of this time is not (although it should be) anywhere near the value of Sloan or Prendergast or Henri, etc. His work from 1913 - 1922 is, rightly or wrongly, considered student work and as good as it is that view may have been your father's own. His 1922 still life paintings are in fact much greater than people give them credit for. We have never been able to succeed in changing the public's conception of them as diminutive and boy did we try - and so on.

Earl it is my hope and prayer that you understand where this is coming from. For the umpteenth time I want you to know that it would kill me to lose you as a friend over anything. It has gotten to the point however that what you continue to write me hurts me in a way that is more than I can take. Please Earl stop acting like you have. You have my attention and I am sorry it took all this for you to make clear how you feel. At this point to continue in the manner you have would be counterproductive and will result in, at least, diminished relations.

I will answer your specific questions next week - how about Monday? I love you Earl and I don't even have to try.

Love,
Larry

On 12/12/06 5:04 PM, "Earl Davis" <mellowpad@earthlink.net> wrote:

Dear Larry -

Since you can't make our scheduled meeting this Thurs and I can't make it on Friday - I would appreciate if you would simply supply me with responses to the following questions that I would otherwise have wanted to know...

-What works are expected to be next returned to me and when?
(I need to convey to you to convey to all concerned a sense of immanent urgency on this)

-*I specifically most want to know the current status of:

Corn Field, Tioga
Bleecker Street,
Twilight In Turkey,
New Mexican Peak,
From The Shore,
Drawing on canvas for Little Giant StillLife

- I would also like to receive whatever new batch of previously undisclosed sales receipts you have managed to put together. I need to know that this will be accomplished in the next week or two. (Since you made a point of telling me how hard it was emotionally for you to do this - please consider how hard it is for me to have to ask and then see that the reasons for my concerns have been legitimated by your discovery of additional works sold for which I have not been paid).

- You said that you were going to be thinking about various payment options and would talk about them with me this week. I would prefer if you just put any such proposals to me in an email for me to consider and respond to.

- Since you have told me that you sold the Bernini and have a payment schedule - I am expecting you to be able to pay me most if not all of what you owe me from that. I need you to be honest and clear with me about the whole picture now Larry as I can no longer tolerate any further promises on which you can't deliver.

Please know that I really hate being in this position to have to make such demands upon you at such a difficult time for you but that I am trying my best not to hate you for putting me here. Your statement last week to the effect of reminding me how much you have done for me and my father's reputation was truly troubling - as if you somehow imagine that I may have forgotten or that somehow one thing justifies another.

I will appreciate your specific responses to the questions above,

Thanks,

Earl

On Dec 12, 2006, at 2:56 PM, Melissa Gastgaber wrote:

Earl - I see that Larry has a conflict with you meeting on Thursday and have been informed by Junette that she spoke to you in my absence to let you know and try to reschedule. Do you have any alternate times/days that will work? Can I suggest Friday early afternoon?

Best,
Melissa

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